

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON**

RITA KAYE TAYLOR,

Plaintiff,

v.

CIVIL ACTION NO: 2:19-cv-00387

CLAY COUNTY SHERIFF'S DEPARTMENT,  
a division of the Clay County Commission;  
CLAY COUNTY COMMISSION,  
a political subdivision of Clay County, West Virginia;  
ROBERT BELT, a deputy sheriff  
of Clay County; and  
JONATHAN HOLCOMB, a deputy sheriff  
of Clay County,

Defendants.

**COMPLAINT**

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1. The plaintiff, Rita Kaye Taylor, brings this action against the defendants, pursuant to 42 U.S.C. §1983, alleging violations of her constitutional rights. Specifically, the plaintiff alleges that her rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution and under Article III, Sections 1, 5, 6, and 10 of the West Virginia Constitution were violated by the defendants when the defendants unlawfully entered and searched the plaintiff's home on or about November 14, 2018.

**PARTIES**

2. The plaintiff, Rita Kaye Taylor, was at all times relevant herein, a resident of Clay County, West Virginia and is 53 years old.

3. The defendant, Clay County Sheriff's Department, is a division of the Clay County Commission and was, at all times relevant herein the public employer for the defendant deputies and is located in Clay County, West Virginia.

4. The defendant, Clay County Commission, is a political subdivision of Clay County, West Virginia, and was, at all times relevant herein, the official entity responsible for the oversight of the Clay County Sheriff's Department and the oversight and employment of the defendant deputies.

5. The defendant, Robert Belt, was at all times relevant herein, employed by the Clay County Sheriff's Department and the Clay County Commission as a deputy sheriff, acting under the authority of a deputy sheriff of Clay County, and was at all times relevant herein acting under the color of the law and within the scope of his employment. The defendant, Robert Belt, is sued only in his individual capacity.

6. The defendant, Jonathan Holcomb, was at all times relevant herein, employed by the Clay County Sheriff's Department and the Clay County Commission as a deputy sheriff, acting under the authority of a deputy sheriff of Clay County, and was at all times relevant herein acting under the color of the law and within the scope of his employment. The defendant, Jonathan Holcomb, is sued only in his individual capacity.

### **FACTS**

7. On or about the morning of November 14, 2018, the plaintiff was at her home in Hartland, West Virginia when Deputy Holcomb knocked on her door.

8. The plaintiff opened her door and Deputy Holcomb placed his leg in the corner so the plaintiff could not close her door.

9. Deputy Holcomb then asked the plaintiff if Pat Dawson was there.

10. The plaintiff responded, "No."

11. Deputy Holcomb then asked if he could come in and search the plaintiff's home.

12. The plaintiff responded, "No. Not without a warrant."

13. Deputy Holcomb then told the plaintiff that he would get a warrant.

14. The plaintiff responded that Deputy Holcomb would have to.

15. At this point, Deputy Belt came through the plaintiff's back door and into the kitchen area.

16. The plaintiff told Deputy Belt he would also need a warrant to enter her home.

17. Deputy Belt then told the plaintiff that he can charge her with obstruction.

18. The plaintiff again told Deputy Belt that he needed to get a warrant.

19. At least three times, the plaintiff told Deputy Belt that he did not have permission to enter her home without a warrant.

20. Nevertheless, Deputy Belt and Deputy Holcomb went ahead and searched the plaintiff's home despite her refusing to give them consent and her multiple requests that they obtain warrants before searching her home.

21. As a result of these actions, the plaintiff suffered indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation.

22. The defendants did not have probable cause to enter and search the plaintiff's home.

23. The defendants acted in bad faith and without reasonable belief that probable cause existed to enter and search the plaintiff's home.

24. At the time the defendants entered the plaintiff's home, it was clearly established as a matter of law that a police officer may not enter an individual's home without probable cause to believe that the individual had committed, was committing, or was about to commit a criminal offense.

25. No reasonable police officer in Deputy Belt or Deputy Holcomb's positions could have believed that he had legal authority to unlawfully enter and search the plaintiff's home given that the defendants knew the plaintiff was on private property and had not committed, was not committing, or was about to commit a criminal offense.

#### **FIRST CAUSE OF ACTION**

##### **(42 U.S.C. §1983 – Unlawful search)**

26. The defendants, while acting under the color of law, violated the plaintiff's constitutional rights.

27. The actions of the defendants violated the constitutional rights guaranteed to the plaintiff under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.

28. The actions of the defendants were not taken in good faith and were in violation of clearly established law.

29. The defendants violated the plaintiff's constitutional rights, as described and identified herein, when they unlawfully searching the plaintiff's home on or about November 14, 2018 after she refused to give consent and requested the defendants obtain a warrant.

30. When the defendants unlawfully searched the plaintiff's home, no objectively reasonable police officer could have perceived that he had the right to enter and search the plaintiff's home under the circumstances.

31. As a direct and proximate result of the defendants' unconstitutional actions, the plaintiff seeks to recover damages in an amount to be determined by the jury to compensate her for:

- A. Mental pain and suffering, past and future;
- B. Injuries resulting from the defendants' conduct;
- C. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- D. All other injuries proven by a preponderance of the evidence proximately caused by the defendants.

32. In addition to these compensatory damages, the plaintiff also seeks to recover, under 42 U.S.C. §1988 the attorney fees and costs incurred during the course of this litigation.

33. In an effort to prevent other similarly situated individuals from suffering the same violation of their constitutional rights, the plaintiff further seeks to have the Court order the defendants to undergo additional training and education addressing the defendants' unlawful searches, the development of policies to preclude such actions in the future, and the implementation of discipline against the defendants to hold them accountable for their wrongful actions.

34. The defendants' actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiff,

thereby entitling the plaintiff to punitive damages in an amount to be determined by the jury.

**SECOND CAUSE OF ACTION**

**(State Constitutional Violations)**

35. This cause of action alleges a constitutional tort action under the West Virginia Constitution, pursuant to the common law of West Virginia, and specifically is not filed pursuant to 42 U.S.C. §1983 or any other federal statute.

36. The actions of the defendants violated the constitutional rights guaranteed to the plaintiff under Article III, Sections 1, 5, 6, and 10 of the West Virginia Constitution.

37. The actions of the defendants also violated the constitutional rights guaranteed to the plaintiff under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.

38. The actions of the defendants were not taken in good faith and were in violation of clearly established law.

39. The defendants violated the plaintiff's constitutional rights, as described and identified herein, when the defendants unlawfully searched the plaintiff's home on or about November 14, 2018.

40. The defendants Clay County Sheriff's Department and Clay County Commission are vicariously liable for the acts of the defendants Belt and Holcomb committed within the scope of their employment.

41. As a direct and proximate result of the defendants' unconstitutional actions, the plaintiff seeks to recover damages in an amount to be determined by the jury to compensate her for:

- A. Mental pain and suffering, past and future;
- B. Injuries resulting from the defendants' conduct;
- C. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- D. All other injuries proven by a preponderance of the evidence proximately caused by the defendants.

42. In an effort to prevent other similarly situated individuals from suffering the same violation of their constitutional rights, the plaintiff further seeks to have the Court order the defendants to undergo additional training and education addressing the defendants' unlawful searches, the development of policies to preclude such actions in the future, and the implementation of discipline against the defendants to hold them accountable for their wrongful actions.

43. The defendants' actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to the plaintiff, thereby entitling the plaintiff to punitive damages in an amount to be determined by the jury.

### **THIRD CAUSE OF ACTION**

#### **(Negligence)**

44. The defendants were negligent in the performance of their duties within the scope of their employment and such negligence was the proximate cause of the plaintiff's injuries.

45. As a direct and proximate result of the defendants' negligence, the plaintiff seeks to recover damages in an amount to be determined by the jury to compensate her for:

- A. Mental pain and suffering, past and future;
- B. Injuries resulting from the defendants' conduct;
- C. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- D. All other injuries proven by a preponderance of the evidence proximately caused by the defendants.

**PRAYER FOR RELIEF**

WHEREFORE, the plaintiff, Rita Kaye Taylor, prays for the following relief:

- 1. Damages set forth in her Complaint, including punitive damages in an amount to be determined by the jury;
- 2. Pre-judgment interest as provided by law;
- 3. Attorney fees and costs; and
- 4. Such further relief as this Court may deem just and equitable.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES TRIABLE TO A JURY.

RITA KAYE TAYLOR  
By Counsel

/s/ John-Mark Atkinson  
Mark A. Atkinson (WVSB #184)  
John-Mark Atkinson (WVSB #12014)  
ATKINSON & POLAK, PLLC  
P.O Box 549  
Charleston, WV 25322-0549  
(304) 346-5100  
emboles@amplaw.com  
johnmark@amplaw.com



AO 440 (Rev. 06/12) Summons in a Civil Action

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UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_  
*Plaintiff(s)*

v.

\_\_\_\_\_  
*Defendant(s)*

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Civil Action No. \_\_\_\_\_

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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Civil Action No. \_\_\_\_\_

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*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

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UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_  
*Plaintiff(s)*

v.

\_\_\_\_\_  
*Defendant(s)*

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Civil Action No. \_\_\_\_\_

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A lawsuit has been filed against you.

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If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

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Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

RITA KAYE TAYLOR

(b) County of Residence of First Listed Plaintiff **CLAY**  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Mark A. Atkinson and John-Mark Atkinson, Atkinson & Polak, PLLC  
P.O. Box 549, Charleston, WV 25322-0549  
304-346-5100

**DEFENDANTS**

CLAY CO. SHERIFF'S DEPT. AND COMMISSION, MICHAEL  
PATRICK MORRIS, AND JONATHAN HOLCOMB

County of Residence of First Listed Defendant **CLAY**  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**42 U.S.C. §1983**

Brief description of cause:  
**Unlawful Search and Negligence**

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/15/2019

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE